



Department of Justice

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**Department of Justice and Federal Trade Commission Provide Comments on
American Bar Association Proposed Model State Law Defining the Practice of Law**

The Department of Justice's Antitrust Division and Federal Trade Commission on Friday released a joint letter urging the American Bar Association ("ABA") to substantially narrow or reject a proposed model definition of the practice of law. If adopted by state governments, the definition likely would reduce or eliminate competition between nonlawyers and lawyers to provide a number of services, leading to higher prices and a reduction in competitive choices for consumers.

According to the letter, signed by Acting Assistant Attorney General for Antitrust R. Hewitt Pate and FTC Chairman Timothy J. Muris, the proposed model definition would prevent nonlawyers from offering many of the services they currently provide. For example, it could be interpreted to prevent lay service providers from closing real estate loans; real estate agents from explaining the smoke detector or termite laws in their states; tenants' associations from informing renters of their legal rights and responsibilities; and software makers from selling will-writing and other software. The proposed definition also could prohibit income tax preparers, accountants, investment bankers and other business planners from providing advice to their clients that includes information about various laws.

The DOJ and FTC concluded in their letter that "the proposed definition is not in the public interest." The letter added, "By including overly broad presumptions of conduct

considered to be the practice of law, the proposed Model Definition likely will reduce competition from nonlawyers. Consumers, in turn, will likely pay higher prices and face a smaller range of service options.”

Separately, Muris noted, "The proposed definition could have a significant chilling effect on electronic commerce. Interactive web sites that help consumers write their own legal documents might be found to be practicing law, and Internet-based lenders would likely find that they could not complete real estate or loan closings without hiring a local attorney in the state where the property is located."

Pate observed, “The proposed definition, if adopted by state governments, likely will increase prices for consumers in two ways. First, those who would not pay for a lawyer would be forced to do so, and, traditionally, lawyers charge more than lay providers for such services. Second, without competition from non-lawyers, lawyers’ fees are likely to increase.”

The FTC and the DOJ also expressed concern that the model definition likely would prevent consumers from benefitting from lay competition that may better suit their individual needs. For example, in the area of real estate closings, nonlawyers may offer to close loans at hours or locations that are more convenient for consumers. Likewise, consumers may choose to use will-making software because it is relatively easy and convenient to use.

The ABA’s Task Force on the Model Definition of the Practice of Law will hold hearings on the proposed definition on Friday, February 7, 2003, in Seattle as part of the ABA's Midyear Meeting. The deadline for submitting written comments was December 20, 2002. The ABA informed the Department of Justice and the Federal Trade Commission that the Model Definition is a proposed statute, regulation, or court rule, and the agencies submitted their comments pursuant to that understanding.

The Federal Trade Commission vote to approve the letter for submission to the ABA was 5-0. The U.S. Department of Justice independently made its decision about approving the letter. For more information on the letter at the U.S. Department of Justice, contact Renata B. Hesse, Chief, Networks and Technology Section, at 202/307-6200. For more information on the letter at the Federal Trade Commission, contact Jerry Ellig, FTC Office of Policy Planning, 202/326-3528.

Copies of the documents mentioned in this release are available from the Federal Trade Commission and the Department of Justice. The Federal Trade Commission's Web site is <http://www.ftc.gov> and the Department of Justice's Web site is <http://www.usdoj.gov/atr>. Paper copies of the documents are also available from the Justice Department's Antitrust Documents Group and the Federal Trade Commission's Consumer Response Center. The Justice Department's Antitrust Documents Group can be contacted by phone: 202/514-2481, fax: 202/514-3763, or e-mail: atrdocs.grp@usdoj.gov. The Federal Trade Commission's Consumer Response Center can be contacted at Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Call toll-free: 1-877-FTC-HELP.

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